

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: SB 1404

SPONSOR: Senator Atwater

SUBJECT: Sales Tax Exemption

DATE: March 20, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barrett</u>	<u>Cooper</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GE</u>	_____
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill provides that, from July 31, 2006, through August 6, 2006, no sales and use tax will be collected on the first \$5,000 of the sales price of any tangible personal property or admission to an event. Purchases made by businesses or by individuals for use in a business are not eligible for the sales tax exemption. In addition, the sales tax exemption does not apply to: discretionary sales surtaxes, convention development taxes, local option food and beverage taxes, rental car surcharges, vending machine sales, dues and fees to clubs, service warranties, and charges for coin-operated amusement machines.

## II. Present Situation:

Pursuant to ch. 212, F.S., the State of Florida levies a 6 percent sales and use tax on most sales of tangible personal property and a limited number of services. Section 212.08, F.S., provides specific exemptions from the sales and use tax. The statutes currently provide more than 200 non-service exemptions. Exemptions generally take the form of identifying specifically exempt items, exempting items when used for particular purposes, and exempting purchases or sales by certain types of organizations, such as the government, churches, and charitable organizations. Section 212.08(7), F.S., provides for 54 miscellaneous sales tax exemptions.

Local governments are authorized to levy numerous types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. The maximum they may levy is 2.5 percent. Under the provisions of s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions "subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions" by chapter 212, F.S., and on communications services by ch. 202, F.S. In addition, the surtax does not apply to any sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service.

In 1998-2001, 2004, and 2005 the Legislature created the "Florida Residents Tax Relief Act." (Chapters 98-341, 99-229, 2000-175, 2001-148, 2004-73, and 2005-271, L.O.F.) In 2005, the act provided that no sales and use tax would be collected on sales of books, clothing, wallets, or bags having a selling price of \$50 or less during the last 9 days of July 2005. Also exempt were school supplies having a selling price of \$10 per item or less. In February 2005, the Revenue Estimating Conference estimated the fiscal impact of the act to be a revenue loss of \$37.9 million. This legislation (Senate Bill 692) has been introduced again during the 2006 Regular Session.

Chapter 2005-40, L.O.F., authorized a sales tax exemption for hurricane preparedness items from June 1, 2005 through June 12, 2005. These exempted items include items of tangible personal property typically associated with hurricane preparedness, and certain items used to protect a residence or business from possible damage resulting from a hurricane or tropical storm. In April 2005, the Revenue Estimating Conference estimated the fiscal impact of this sales tax exemption to be a revenue loss of \$9.6 million. Similar legislation (Senate Bill 24) has been introduced during the 2006 Regular Session. In February 2006, the Revenue Estimating Conference estimated that this legislation would result in a revenue loss of \$33.3 million in fiscal year 2006-07.

### III. Effect of Proposed Changes:

**Section 1** provides that, from July 31, 2006, through August 6, 2006, no sales and use tax will be collected on the first \$5,000 of the sales price of any tangible personal property or admission to an event. This exemption does not apply to tangible personal property that is leased. Purchases made by businesses or by individuals for use in a business are not eligible for the sales tax exemption. In addition, the sales tax exemption does not apply to:

- Rental car surcharges paid pursuant to s. 212.0606, F.S.<sup>1</sup>;
- Sales from vending machines taxed pursuant to s. 212.0515, F.S.<sup>2</sup>;
- Dues and fees paid to private clubs and membership clubs, as described in s. 212.02(1), F.S.;
- Service warranties taxed pursuant to s. 212.0506, F.S.<sup>3</sup>;
- Charges for the use of coin-operated amusement machines under s. 212.05(1)(h), F.S.<sup>4</sup>;
- Discretionary sales surtaxes levied pursuant to ss. 212.054 and 212.055, F.S.;
- Convention development taxes levied pursuant to s. 212.0305, F.S.<sup>5</sup>; and
- Local option food and beverage taxes levied pursuant to s. 212.0306, F.S.<sup>6</sup>.

If an item of tangible personal property is purchased having a sales price of \$1,000 or more, the purchaser must provide to the retailer a Florida Sales Tax Purchaser's Certification of Personal Consumption.

<sup>1</sup> A surcharge of \$2 per day is imposed on the first 30 days of a lease or rental of a motor vehicle.

<sup>2</sup> The amount of tax to be paid on items sold from vending machines is calculated based on gross taxable sales.

<sup>3</sup> Service warranties are taxed at a rate of 6 percent, this is in addition to any other taxes the service warranty is subject to.

<sup>4</sup> Tax is imposed at a rate of 4 percent for the use of coin-operated amusement machines.

<sup>5</sup> A county with at least two municipalities may levy a 2 percent tax on rentals of transient accommodations.

<sup>6</sup> Food and beverages sold at hotels and motels may be taxed at a rate of 2 percent; food and beverages sold at establishments licensed to sell alcoholic beverages may be taxed at a rate of 1 percent. This is in addition to any other taxes these items are subject to.

The Department of Revenue (DOR) is authorized to adopt rules to implement and administer this sales tax exemption. DOR is specifically authorized to adopt rules applying to the contents of the Florida Sales Tax Purchaser's Certification of Personal Consumption. DOR may also adopt rules relating to issues such as multiple items in one purchase, bundled items, coupons, exchanges, layaway sales, rebates, returns, and wrongly collected taxes.

This bill also provides an appropriation of \$400,000 from the General Revenue Fund to DOR for purposes of administering the sales tax exemption.

**Section 2** provides that this act shall take effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by 2/3 vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority exists as of February 1, 1989.

This sales tax exemption does not apply to local option sales taxes; therefore it will not reduce the revenue-raising authority of municipalities and counties.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet adopted an official estimate of the fiscal impact of this bill. However, preliminary estimates indicate that this sales tax exemption may result in a revenue loss of between \$400 million and \$575 million.

##### **B. Private Sector Impact:**

During the specified period, eligible items can be purchased for 6 percent less, as they will not be subject to sales tax.

Retail sellers may incur some costs for the reprogramming of cash registers and accounting systems. These costs may be mitigated by the existence of procedures developed for previous tax-free shopping periods.

C. Government Sector Impact:

DOR may adopt rules to carry out the provisions of this bill and is appropriated \$400,000 from the General Revenue Fund for administrative purposes.

VI. Technical Deficiencies:

The rental of transient accommodations is not considered the purchase of tangible personal property or admissions, and is therefore outside the scope of this exemption. The bill specifically excludes convention development taxes from the exemption. This provision is unnecessary, because convention development taxes are only imposed on transient accommodations.

VII. Related Issues:

DOR has identified several issues with the bill:

*Administration*

In prior sales tax holidays, the tax-free period applied to sales tax *and* discretionary sales surtax. This bill provides that the discretionary sales surtax still be collected on items exempt from sales tax. This will present administrative problems for dealers to accurately report the transactions. It will be difficult for taxpayers to report exempt sales since they will be exempt from only the 6 percent sales tax rather than completely tax exempt.

Taxpayers have already received their 2006 tax return materials, which are available in paper or electronic format. In order to comply with the provisions of this bill, electronic filers would have to purchase additional software for the exempt period. DOR's internet filing system will also need to be modified for the tax-exempt period. Paper-filers may require additional forms as well.

The bill provides that the exempt period will be from July 31, 2006 through August 6, 2006. This time period affects two tax-return periods. Since the exemption will be difficult to administer, DOR suggests the exempt period occur during one calendar month.

*Admissions*

It is unclear whether the exemption would apply to admissions purchased during the exemption period and not used until after the exemption period. It is also unclear whether or not all admissions are exempt from sales tax. The term "admissions" is defined in s. 212.02(1), F.S., and does not include the term "event"; the bill refers to "admissions to events."

*Sales tax imposed on rental car surcharge and other surcharges and fees*

The exemption does not apply to rental car surcharges, but it is unclear whether sales tax should be collected on the rental car surcharges. It is also unclear whether or not sales tax should be collected on other surcharges and fees.

## **VIII. Summary of Amendments:**

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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